

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANIEL MENDOZA, 28122-078

VS.

UNITED STATES OF AMERICA

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§

CIVIL ACTION NO. 4:21cv169

ORDER

Pro se Movant Daniel Mendoza filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. A review of the motion reveals that it should arguably be denied as time-barred. The Final Judgment in the underlying criminal case issued on September 27, 2019, and the United States Court of Appeals for the Fifth Circuit dismissed Movant’s appeal on October 28, 2019. Movant did not file a petition for writ of certiorari.

A one-year statute of limitations was enacted for motions to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255. In general, a movant for collateral relief has one year from “the date on which the judgment became final” to file a motion challenging a conviction. A conviction is final under § 2255 when a defendant’s options for further direct review are foreclosed. *United States v. Gamble*, 308 F.3d 536, 537 (5th Cir. 2000); *United States v. Thomas*, 203 F.3d 350, 352 (5th Cir. 2000). Movant’s conviction became final on January 26, 2020 – ninety days following the dismissal of his appeal. The instant action was therefore due no later than January 26, 2021. Movant filed the motion on March 1, 2021; therefore, it appears Movant’s § 2255 motion is untimely. Before acting on its own initiative to dismiss a motion as untimely, the Court will accord Movant fair notice and an opportunity to present his position on this matter. *Day v. McDonough*, 547

U.S. 198, 210 (2006).

Accordingly, it is **ORDERED** Movant has fourteen days to respond as to the timeliness of his motion. Movant is placed on notice that the § 2255 motion may be dismissed if he fails to timely comply with this Order.

So ORDERED and SIGNED this 29th day of March, 2023.

A handwritten signature in black ink, appearing to read 'KLPJ', is written over a horizontal line.

KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE